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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,231	01/04/2005	Andre Johan Taljaard	930092-2008	5104
7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151				
07/18/2008				
EXAMINER				
MAL HAO D				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
07/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,231

Applicant(s)

TALJAARD, ANDRE JOHAN

Examiner

HAO D. MAI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/18/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-8,11-14 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,11-14 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-2, 5-8, 11-14, and 18, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites the limitations "the form" (line 13 of claim 1), "the airway" (lines 19 and 23 of claim 1), and "the mouth" (line 22 of claim 1), which lack antecedent basis.
- Claims 1 and 5 each recites "a working gap" (line 18 of claim 1; line 3 of claim 5). It is unclear whether they are the same or different working gap(s). Claim 6 then also recites "the working gap" (line 2 of claim 6); it is unclear to which working gap it is referring, i.e. the working gap of claim 1 or of claim 5.
- Claim 14 recites the limitation "the patient's bite size" (line 3 of claim 14), which lack antecedent basis.
- Claim 11 recites the limitation "the material" (line 3 of claim 11), which lack antecedent basis.
- Claim 18 recites the limitation "the airway" (line 4 of claim 18), which lack antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 5-7, 11-12, 14, and 18, are further rejected under 35 U.S.C. 102(b) as being anticipated by Moss (4,053,984).

Regarding claim 1, Moss discloses a mouth prop 10, capable of retaining a medical tube, comprising: a first patient engaging portion 14 and a second patient engaging portion 16, capable of engaging a zone of an upper jaw and lower jaw of a patient; both first and second patient engaging portions are each shaped in the form of a dental arch and having tooth engaging portions, e.g. 42, 44, or any point along 14 or 16, are capable of engaging the teeth (Fig. 1). The first and second patient engaging portions are shown to be biased apart, providing a working gap there between. The mouth prop 10 further comprises a medical tube guide means (near 40) for holding medical tube 32 located in the airway of the patient; the medical tube guide means is supportable on the second patient engaging portion 16/44 and located relative to the patient engaging portions such that it is operatively positioned at the mouth of the patient in order to hold the medical tube 32 as it exits the airway of the patient (Figs. 1-2).

As to claim 2, Moss further discloses the first and second patient engaging portions having resiliently deformable portions 42 and 44 (column 3 lines 25-26). As to claims 5-7, the medical guide means (near 40) is sized to permit a view into the mouth through the working gap when the medical tube is in place in the patient's mouth; the medical guide means is located eccentrically the working gap, i.e. not at the center of the working gap; and the medical tube guide means immobilizes the medical tube 44 in a desired position (Fig. 1). As to claim 11, the first and second patients engaging portions 14 and 16 are biased apart by resilient deformability of the material/bights 18 and 20 (Fig. 1). As to claim 12, the medical tube guide mean (near 40) includes an eye through which the medical tube 32 passes (Fig. 1). As to claim 14, the first and

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second patient engaging portions 14 and 16, including portions 42 and 44, are shown to approximate the patient's bite size (Fig. 1).

As to claim 18, the method comprising the steps of biasing a patient's teeth away from the medical tube while permitting the medical tube to be guided into the patient is naturally and inherently carried out when using the device disclosed by Moss as detailed above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss (4,053,984) in view of Bradley et al. (5,626,128).**

Moss teaches of the invention substantially as claimed. However, Eldreth failed to disclose a securing means (claim 8) and a slip resistant portion (claim 13).

Bradley et al. teach of an endotracheal tube fixation device having a securing means of clamp 40/44 that is operable between a securing position to secure the medical tube against longitudinal displacement and a releasing position allowing the medical to be longitudinally displaceable into and out of the patient's mouth (Figs. 1-2). Bradley et al. also disclose clamp 40/44 having an interior surface with slip resilient features such as adhesive, grooves, raised projections, etc., to prevent slippage movement of the medical tube by having (column 4 lines 29-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Moss by including the clamp 40/44 having a slip resistant interior

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surface as taught by Bradley et al. in order to releasably securing and preventing free movement and slippage of the medical tube..

Response to Arguments

7. Applicant's arguments filed 04/18/2008 have been fully considered but are moot in view of the new ground(s) of rejection necessitated by the newly made amendment(s) to the claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732